

**JOINT POWERS AGREEMENT
BETWEEN DAKOTA COUNTY AND SCOTT COUNTY
FOR VERMILLION RIVER WATERSHED**

WHEREAS, Minnesota Statutes § 471.59 authorizes local governmental units to jointly or cooperatively exercise any power common to the contracting parties; and

WHEREAS, pursuant to Minn. Stat. § 103B.231 a watershed management plan is required for watersheds comprising all minor watershed units wholly or partly within the metropolitan area, in accordance with the requirements of § 103B.205 to § 103B.255; and

WHEREAS, the Vermillion River Watershed is a watershed comprising minor watershed units wholly within the metropolitan area, specifically, within Dakota County and Scott County; and

~~WHEREAS, pursuant to Minn. Stat. § 103B.231 if a watershed management organization within the metropolitan area is terminated, the counties containing the watershed unit shall prepare, adopt, and implement the watershed plan and shall have the planning, review, permitting, and financing authority of a watershed management organization specified in Minn. Stat. §§ 103B.211 to 103B.255; and~~

~~WHEREAS, the Vermillion River Watershed Management Organization, consisting of 21 20 cities and towns located within the Vermillion River Watershed ceased to exist as of August 1, 2000; and~~

WHEREAS, effective September 5, 2002, Dakota County and Scott County entered into a joint powers agreement (“2002 JPA”)~~desire~~ to cooperatively carry out their responsibilities and duties pursuant to Minn. Stat. §§ 103B.-211 to 103B.255; and

WHEREAS, the Vermillion River Watershed Joint Powers Organization (“VRWJPO”), an independent joint powers entity organized under Minn. Stat. § 471.59, was created by the 2002 JPA to carry out Dakota County’s and Scott County’s responsibilities and duties pursuant to Minn. Stat. §§ 103B.211 to 103B.255; and

WHEREAS, Dakota County and Scott County desire to update the terms and conditions of their joint powers agreement to cooperatively carry out their responsibilities and duties pursuant to Minn. Stat. §§ 103B.211 to 103B.255 ~~do so~~ pursuant to the authority granted to them ~~pursuant to by~~ Minn. Stat. § 471.59; and

WHEREAS, Dakota County and Scott County desire that the terms and conditions of this Agreement~~to~~ replace the terms and conditions of the 2002 JPA moving forward effective upon the full execution of this Agreement by the parties to this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and benefits that Dakota County and Scott County shall derive herefrom, Dakota County and Scott County hereby enter into this joint powers agreement for the purposes herein.

I. Purposes.

This Agreement has been executed by Dakota and Scott Counties for the purposes set forth at Minn. Stat. § 103B.201 within the political boundary of the Vermillion River watershed located in Dakota County and Scott County, as shown on the attached ~~m~~Map ~~A~~, hereby incorporated by reference. Specifically, the purpose of this Agreement is to establish a joint powers board that will (1) exercise leadership in the development of policies, programs and projects that will promote the accomplishment of the purposes found at Minn. Stat. § 103B.201, including the preparation, adoption and implementation of the plan required by Minn. Stat. § 103B.211 for the Vermillion River watershed and (2) guide and assist Dakota County and Scott County in acting jointly and individually to take actions that will promote the goals listed in Minn. Stat. § 103B.201 and fulfill their responsibilities under Ch~~.apter~~ 103B.

II. Joint Powers Board.

A. Creation and Composition of Joint Powers Board.

A joint powers board, known as the Vermillion River Watershed Joint Powers Board (VRWJPB), ~~has been~~~~is~~ established for the purposes contained herein with the powers and duties set forth in this Agreement. ~~The VRWJPB shall consist of one county commissioner from Scott County and two county commissioners from Dakota County. The board of commissioners of each county shall appoint, by resolution, its representative(s) to the VRWJPB, together with one alternate commissioner. Resolutions appointing representatives of each county shall be filed with the clerk to the board of commissioners of Dakota County.~~

The commissioners of each county assigned to the VRWJPB receive no additional compensation for their appointment to the VRWJPB beyond what they receive as a county commissioner.

B. Terms.

Each county representative and alternate on the VRWJPB shall be appointed for a ~~two~~~~one~~-year term, ~~except that the terms of the initial members shall extend from the date of their appointment through December 31, 2004.~~ ~~In the event that~~ any county representative or alternate shall not have been appointed by the board of commissioners prior to expiration of the representative's term, the incumbent representative shall serve until a successor has been appointed.

C. Vacancies.

If the appointment of any representative commissioner or alternate to the VRWJPB is vacated before the end of their ir term, the vacancy shall be filled by appointment by the appropriate county board of commissioners in accordance

with Minn. Stat. § 103B.227, subd. 1, and Minn. Stat. § 471.59, subd. 11.- A vacancy shall be deemed to have occurred when any of the conditions specified in Minn. Stat. § 351.02 exist or if a representative fails to qualify or act as a commissioner. Dakota County and Scott County shall notify the Minnesota Board of Water and Soil Resources of their appointments and vacancies to the VRWJPB pursuant to Minn. Stat. Stat. § 103B.227, subd. 1.

D. Chair and Vice-chair.

The VRWJPB shall elect a chair and a vice-chair from its membership for a one-year terms. The chair shall preside at all meetings of the VRWJPB and shall perform other duties and functions as may be determined by the VRWJPB. The vice-chair shall preside over and act for the VRWJPB during the absence of the chair.

E. Secretary/Treasurer.

The VRWJPB shall elect a secretary/treasurer from its membership for a one-year term. The secretary/treasurer shall submit all minutes of VRWJPB meetings for approval by the VRWJPB and shall assist the chair in overseeing the VRWJPB's budget and finances.

F. Meetings.

Minn. Rule § 8410.0030 requires ~~T~~the VRWJPB ~~shall~~ have regular meetings at least at a minimum annually. The VRWJPB shall determine such times and places to conduct their meetings—and at such times and places as the VRWJPB shall determine. Special meetings may be held on reasonable notice by the chair or by a majority of the VRWJPB upon terms and conditions as the VRWJPB may determine. The presence of a majority of the VRWJPB at a meeting shall constitute a quorum. The VRWJPB shall be subject to the requirements of the Open Meeting Law, Minn. Stat. Ch. 13D.

The VRWJPO shall post all notifications regarding the VRWJPB's meeting agendas and location and time of meetings on its website and any other location required by the Open Meeting Law, Minn. Stat. Ch. 13D.

G. Voting.

Each county representative shall be entitled to one vote. If a county representative is absent, that county's alternate is entitled to one vote. If more than one Dakota County representative is absent, Dakota County's alternate shall be entitled to only one vote. The VRWJPB shall function by a majority vote of the county representatives present.

Decisions of the VRWJPB, including decisions regarding capital improvement projects, require a majority vote.;

H. Staff.

Dakota County and Scott County shall provide staff support to the VRWJPB. Dakota County and Scott County shall provide legal services as needed, and in accordance with applicable law.

Dakota County shall provide staffing for the VRWJPO's day-to-day operations, including assigning an administrator (Administrator) to act as a liaison and perform the duties generally described in this joint powers agreement and the Vermillion River Watershed Management Plan, including but not limited to managing the general operations and activities of the VRWJPO, implementation of the watershed plan in Dakota County, project planning and staffing under the direction of the VRWJPB, and any other role generally described in the Vermillion River Watershed Management Plan.

Scott County shall provide staffing of a co-administrator (Co-Administrator) for the VRWJPO to act as a liaison and to assist the Administrator regarding VRWJPO activities including but not limited to managing the general operations and activities of the VRWJPO, implementation of the watershed plan in Scott County, project planning and staffing under the direction of the VRWJPB, and any other role generally described in the Vermillion River Watershed Management Plan.

By resolution of the VRWJPB, the VRWJPB may annually delegate limited authority to the Administrator and/or Co-Administrator. The limited authority delegated annually to the Administrator and/or Co-Administrator shall be reviewed by the VRWJPB following a change of commissioners serving on the VRWJPB or a change in the staffing of either the Administrator or Co-Administrator by the counties.

Both the Dakota County Attorney's Office and Scott County Attorney's Office have statutory obligations to represent their County Board pursuant to Minn. Stat. Ch. 388, and legal obligations imposed by various provisions of state statute. In the event that either the Dakota County Attorney's Office or the Scott County Attorney's Office determines a conflict of interest would exist if the County Attorney's Office represented both their county and the VRWJPO/VRWJPB on a specific matter, the County Attorney's Office will so inform the county and VRWJPB through its Administrator or Co-Administrator. In the event a County Attorney determines a conflict exists, the conflict of interest procedures of the applicable County Attorney's Office will be followed and the VRWJPO/VRWJPB will obtain independent legal counsel to represent the VRWJPO/VRWJPB in the matter where the conflict exists. The parties agree

that there is no conflict of interest for either the Dakota County Attorney's Office or the Scott County Attorney's Office to represent both their county and the VRWJPO/VRWJPB in preparation and execution of this Agreement. Requests for legal services made by the VRWJPO/VRWJPB will be handled on the same priority basis as that of the counties.

Funding for the staffing services described herein are covered by the VRWJPO/VRWJPB revenues from the counties, applicable grant funds or other State appropriations when available. The staffing services and payment for staffing services identified herein shall be in accordance to separate service agreements between the counties and VRWJPO/VRWJPB when deemed necessary by the applicable county.

I. Duties of the VRWJPB.

The VRWJPB shall have the responsibility to prepare, adopt and implement a plan for the Vermillion River watershed that meets the requirements of Minn. Stat. § 103B.231; the responsibility to review and approve local water management plans as provided in Minn. Stat. § 103B.235; the responsibility to regulate the use and development of land in the Vermillion River watershed if the conditions found at Minn. Stat. §. 103B.211, subd. 1(a)(3)(i)(ii)(iii) are present.

III. Powers of the VRWJPB.

A. General Powers.

The VRWJPB is hereby authorized to exercise such authority as is necessary and proper to fulfill its purposes and perform the duties identified in ~~paragraph Section II~~ (I) above. Such authority shall include, but not be limited to, those specific powers enumerated in ~~paragraph Section III (Sections B through I)~~ herein. The VRWJPB may refer decisions for approval by the boards of commissioners of Dakota County and Scott County. The VRWJPB shall not have the authority described at Minn. Stat. § 103B.211, subd. 1(a)(6).

B. Contracts.

The VRWJPB may enter into any contract necessary or proper for the exercise of its powers or the fulfillment of its duties and enforce such contracts to the extent available in equity or at law, including contracts with Dakota County

and/or Scott County.- Additionally, the VRWJPB may enter into agreements pursuant to Minn. Stat. § 471.59. The VRWJPB may approve any contract up to the amount included in the approved annual budget and may authorize its chair, Administrator or Co-Administrator— to execute these contracts in accordance with and subject to the limitations set forth herein and/or resolution of the VRWJPB. -No payment on any invoice for services performed by a consultant or any other person or organization providing services in connection with this Agreement shall be authorized unless approved by the chair and vice-chair, ~~or by~~ the chair and secretary/treasurer, ~~or Administrator or Co-Administrator~~. The chair, Administrator or Co-Administrator shall report to the VRWJPB and the VRWJPB shall ratify any such payments authorized under this provision at its next regular meeting.

C. Funds.

The VRWJPB may disburse funds in a manner which is consistent with this Agreement and with the method provided by law for the disbursement of funds by the parties to this Agreement.

D. Bylaws.

The VRWJPB shall have the power to adopt and amend such bylaws ~~that~~ it may deem necessary or desirable for the conduct of its business. Such bylaws shall be consistent with this Agreement and any applicable laws or regulations.

E. Grants and Loans.

The VRWJPB may apply for and accept gifts, grants or loans of money, other property or assistance from the United States government, the State of Minnesota, or any person, association or agency for any of its purposes; enter into any agreement in connection therewith; and hold, use and dispose of such money, other property and assistance in accordance with the terms of the gift, grant or loan relating thereto.

F. Property.

The VRWJPB may hold such property as may be required to accomplish the purposes of this Agreement and upon termination of this Agreement make distribution of such property as is provided for in this Agreement.

G. Insurance.

The VRWJPO shall obtain protection for the board, participants, sponsoring agencies and any owned property. At a minimum the VRWJPO shall maintain liability coverage for the actions of the VRWJPB with a limit of coverage equal to or greater than the liability limits under Minn. Stats. Ch. 466. The VRWJPO

shall also obtain tail coverage following termination of this Agreement to cover the statute of limitations period during which a claim could be made against the VRWJPO/VRWJPB. Any insurance obtained shall name each participant and sponsoring agency as a covered party.~~The VRWJPB may obtain any liability insurance or other insurance it deems necessary to insure itself and Dakota County and Scott County for action arising out of this Agreement.~~

H. Exercise of Powers.

All powers granted herein shall be exercised by the VRWJPB in a fiscally responsible manner and in accordance with the requirements of law. – The purchasing and contracting requirements of the county which is the lead for the project shall apply to the VRWJPB.

I. Public Participation.

The VRWJPB shall provide for such public participation in the conduct of its activities as will promote understanding of its activities among the public and local governmental units affected by the activities and the informal resolution of disputes or complaints.

IV. Reservation of Authority.

All responsibilities not specifically set out to be jointly exercised by the VRWJPB under this Agreement are hereby reserved to the cCounties.

V. Budgeting and Funding.

A. Budget.

By September 1 of each year, the VRWJPB shall adopt a budget for the following calendar year in accordance with Minn. Stat. § 103B.211, subd. 1 (a)(5). Any proposed contribution from Dakota County or Scott County which the VRWJPB deems appropriate to be satisfied from the annual property tax levy must be recommended to Dakota County and Scott County prior to the date by which the counties shall establish their maximum levy pursuant to Minn. Stat. § 275.065, subd. 1. Other proposed contributions or assessments from Dakota County or Scott County may be made at any time.

B. County Funding.

If there is proposed funding from Dakota County or Scott County which is to be satisfied from the annual property tax levy, such proposed funding shall not become the obligation of either county unless and until the respective county has agreed to the funding as part of the county's annual budget and levy process pursuant to Minn. Stat. § 275.065. -If there is proposed funding from Dakota

County or Scott County which is not to be satisfied from the annual property tax levy, such funding shall not become the obligation of either county until the respective county has agreed by resolution to the funding.

Any proposed funding from Dakota County or Scott County which has been included within the county's levy or which has been approved by resolution of the Dakota County or Scott County board of commissioners shall constitute an assessment against the county and shall be paid over to the VRWJPB pursuant to its terms, this Agreement, and as required by law.

C. Expenditure Policy.

Dakota County and Scott County agree that the budget for each year shall include expenditures which will benefit the portion of the Vermillion River Watershed located in Scott County.

D. Fiscal Agent.

Dakota County agrees to serve as the fiscal agent for the VRWJPB. Dakota County agrees to provide any and all budgeting and accounting services necessary or convenient for the VRWJPB. Such services include, but are not limited to, management of all funds, including county contributions and grant monies; payment for contracted services; relevant record keeping and bookkeeping. The ~~treasurer/auditor~~ Finance Department of Dakota County shall act as controller for the VRWJPB and shall draw warrants to pay demands against the VRWJPB when the demands have been approved by the VRWJPB. The VRWJPB may in its discretion choose to retain a fiscal agent and/or controller other than Dakota County. Dakota and Scott County retains the authority to request reports pertaining to any and all budgeting, ~~and~~ and accounting and controller services. All interest earned from VRWJPB funds shall be credited back to that fund.

E. Accountability.

Strict accountability of All funds and report of all receipts shall be accounted for according to generally accepted accounting principles provided for pursuant to Minn. Stat. § 471.59, subd. 3.

VI. Watershed Planning Commission Community Advisory Committee.

As soon as practicable after appointment of the VRWJPB, the VRWJPB by resolution shall establish and make appointments to the Community Advisory Committee (formally known as the Watershed Planning Commission (WPC), which shall initially be comprised of the currently appointed members of the Watershed Planning Commission, who shall serve as members of the Community Advisory Committee for

the remainder of their current terms. Thereafter, the VRWJPB shall utilize an open appointments process for making these appointments.

A. Responsibilities of ~~WPC~~Community Advisory Committee.

~~The ~~WPC~~Community Advisory Committee shall have the responsibility to advise the VRWJPB with respect to implementation of the VRMJPB's VRWJPB's duties pursuant to this Agreement, including the responsibility to review and provide ,—comment and non-binding recommendation and recommend upon regarding the VRWJPO's proposed watershed management plan; review, comment and recommend upon the , proposed annual work plan and budget, and any other item for which the VRWJPB requests a recommendation. The Community Advisory Committee may also provide comment to the VRWJPB regarding any items discussed by the Community Advisory Committee at its meetings; and recommend action regarding disputes pursuant to section IX hereof.~~

B. Membership.

~~The ~~WPC~~Community Advisory Committee shall consist of nine members who are residents of the Vermillion River Watershed either Dakota County or Scott County with appointment preference given to applicants that live within the watershed area for which they are to be appointed. One shall be from Scott County and eight shall be from Dakota County. The VRWJPB shall appoint members of the Community Advisory Committee for a term of three (3) years ("Appointment Term"). Excluding any "interim appointment," a member of the Community Advisory Committee can be appointed to serve two (2) consecutive terms. The Appointment Term shall begin on the day of appointment. The VRWJPB may appoint an expiring term member of the Community Advisory Committee to continue to serve as an interim appointment upon the expiration of that member's term where the VRWJPB has not received applications for that expiring term member's position. The interim member's appointment shall expire upon the VRWJPB's appointment of a new member of the Community Advisory Committee filling the position held by the interim member. WPC members shall be appointed to three year staggered terms. WPC members must be and remain residents of the watershed and the County from which they were appointed. WPC members are limited to serving two consecutive terms.~~

C. Conflict of Interest.

If any ~~WPC~~Community Advisory Committee member has a financial interest or personal interest with respect to the parties involved, or stands to realize a financial or personal gain or loss with respect to an ~~action item~~ on any matter coming before the ~~Community Advisory Committee~~WPC, that member shall disclose this fact and be disqualified from taking part in any discussion, ~~or action comment or non-binding recommendation~~ on the matter as a member of the

Community Advisory Committee~~WPC~~. -The chair of the Community Advisory Committee~~WPC~~ shall make rulings on such disqualifications.- Any Community Advisory Committee~~WPC~~ member who believes that the Community Advisory Committee~~WPC~~ chair should be disqualified from any matter hereunder may refer the matter to the vice-chair who shall make a ruling on such disqualification.

D. Compensation.

Members of the Community Advisory Committee~~WPC~~ shall be eligible to receive a per diem payment ~~of \$35- in an amount approved by each County~~ per meeting in lieu of expenses.

E. Officers.

The Community Advisory Committee~~WPC~~ shall elect a chair and vice-chair from among its members. The chair and vice-chair shall serve for one-year terms.

F. Meetings.

The Community Advisory Committee~~WPC~~ shall meet regularly pursuant to a schedule established by the Community Advisory Committee~~WPC~~. Special meetings may be called by the chair. All meetings shall be conducted in accordance with Community Advisory Committee bylaws adopted pursuant to Section VI (G). ~~The WPC shall be subject to the Open Meeting Law, Minn. Stat. Ch. 13D.~~

G. Bylaws.

The Community Advisory Committee~~WPC~~ shall adopt bylaws governing its activities. Such bylaws shall address time, place, and manner of meetings consistent with any applicable law. Such bylaws shall also be subject to approval by the VRWJPB and shall be consistent with law and terms of this Agreement.

H. Staff Support.

Dakota County and Scott County shall provide staff support to the Community Advisory Committee~~WPC~~. The cost of such support will be funded through the budget of the VRWJPB. The VRWJPB also may make technical support available to the Community Advisory Committee~~WPC~~.

VII. Indemnification.

~~If the VRWJPB incurs any expenses as a result of a claim for damages, the expenses and any damages paid shall be assessed against the counties in proportionate shares. Proportionality will be measured with reference to fault, percentage of county financial contribution, location of the project or other similar factors giving rise to the damages or expenses. Dakota County and Scott County hereby agree to indemnify, save, hold harmless and defend the VRWJPB, its officers, employees, and agents for negligent or intentional acts or omissions of itself, its officers, employees, and agents that result in expenses or damages assessed against the VRWJPB.~~

~~The VRWJPB-O shall be considered a separate and distinct public entity to which the parties Dakota County and Scott County have transferred all responsibility and control for actions taken pursuant to this Agreement. The VRWJPOB shall comply with all laws and rules that govern a public entity in the State of Minnesota and shall be entitled to the protections of Minn. Stats.esota Statues Ch.apter 466.~~

~~The VRWJPOB shall fully defend, indemnify and hold harmless the parties Dakota County and Scott County against all claims, losses, liability, suits, judgments, costs and expenses by reason of the action or inaction of the VRWJPB and/or employees and/or the agents of the VRWJPO, if anyB. This Agreement to indemnify and hold harmless does not constitute a waiver by any participant of limitations on liability provided under Minn.esota Statutes.; §Section 466.04.~~

~~To the full extent permitted by law, actions by the parties pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity” and it is the intent of the parties that they shall be deemed a “single governmental unit” for the purpose of liability, as set forth in Minn.esota Stat.utes; §Section 471.59, subd. 1a; provided further that for purposes of that statute, each party to this Agreement expressly declines responsibility for the acts or omissions of the other party.~~

~~The parties of this Agreement are not liable for the acts or omissions of the other participants to this Agreement except to the extent to which they have agreed in writing to be responsible for acts or omissions of the other parties.~~

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VIII. Records, Accounts, and Reports.

The books and records of the VRWJPB shall be subject to the provisions of Minn. Stats. Ch. 13. -The VRWJPB annually shall give a complete written report of all financial activities for the previous fiscal year to the counties.

IX. Dispute Resolution.

Disputes between Dakota County and Scott County may be addressed by any means agreed upon by them, and may include the procedures set forth at Minn. Stat. § 103B.345.

X. Termination.

This Agreement shall continue until it is terminated upon the withdrawal of either member county. Either county may withdraw upon one year's written notice of intent to withdraw to the other county. Withdrawal shall not act to discharge any liability incurred or chargeable to the withdrawing county before the effective date of the withdrawal. Such liability shall continue until discharged by law or agreement.

XI. Distribution of Surplus Funds and Property.

Upon termination of this Agreement, funds and property held by the VRWJPB shall then be distributed to Dakota County and Scott County in proportion to their contributions.

XII. Amendments.

This Agreement may be amended only in writing and upon consent of each of the county boards of commissioners of Dakota County and Scott County.

XIII. Severability.

The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either party.

XIV. Replaces Prior Agreement.

This Agreement replaces the 2002 JPA executed by Dakota County and Scott County as it relates the powers, duties and obligations to be exercised hereunder commencing on the date that this Agreement is executed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

[SIGNATURES ON THE FOLLOWING PAGE]

Approved as to form:

Assistant Dakota County Attorney/Date
Successor

COUNTY OF DAKOTA

By _____
~~Donald J. Maher~~Joe Atkins, or
Chair, Board of Commissioners

Date of Signature _____

ATTEST:

~~Mary Scheide~~Jennifer Reynolds
Jennifer Reynolds
Clerk to the Board

Date of Signature _____

Approved as to form:

Assistant ~~Dakota~~Scott County Attorney/Date
Successor

COUNTY OF SCOTT

By _____
~~Barb Weekman Brekke~~Dave Beer, or
Chair, Board of Commissioners

Date of Signature _____

ATTEST:

Lezlie Vermillion
Clerk to the Board/Administrator

Date of Signature _____

Vermillion River Watershed

